IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

2017-CA-009484-O

BAIYWO ROP

Plaintiff(s),

vs.

ADVENTIST HEALTH SYSTEM

Defendant(s).

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ORDER ON DIRECTED VERDICTS AND FINAL JUDGMENT FOR DEFENDANT

THIS MATTER comes before the Court, and the Court, having reviewed the court file, the applicable law, and having presided over the trial in this matter and being otherwise fully informed, finds as follows:

1. This case involves claims alleging discrimination in violation of Chapter 760, Fla. Stat., brought by the Plaintiff, Baiywo Rop, against his employer, Advent Health/Florida Hospital. At the time of the alleged discrimination, Dr. Rop was employed as a resident in Advent Health/Florida Hospital's Radiology Residency Program. Dr. Rop claimed discrimination on the basis of disability, national origin, race, and retaliation.
2. The case was tried before a jury between May 14, 2021 and May 21, 2021.
3. After hearing arguments presented by the parties at the close of the Plaintiff's case, the Court granted a directed verdict against the Plaintiff regarding two of the Plaintiff's claims, 1) the claim alleging discrimination on the basis of national origin and 2) the claim of discrimination on the basis of disability.

4. The Court reserved ruling as to Defendant's motions for directed verdicts related to the remaining two claims (retaliation and race). *See Ricks v. Loyola*, 822 So. 2d 502, 506 (Fla. 2002).

5. On May 21, 2021, the jury returned a verdict responding "Yes" that "Dr. Rop has proved that race was a motivating factor in Florida Hospital's decision to take any adverse employment action against him."

6. As to whether "Florida Hospital dismissed Baiywo Rop from its Radiology Residency Program action because he engaged in protected activity" the jury responded "No".

7. The jury awarded compensatory damages to Dr. Rop in the amount of $2,750,000.00.

8. "A motion for directed verdict should be granted when there is no reasonable evidence upon which a jury could legally predicate a verdict in favor of the non-moving party." *Etheredge v. Walt Disney World Co.*, 999 So. 2d 669, 671 (Fla. 5th DCA 2008); *Goolsby v. Qazi*, 847 So. 2d 1001, 1002 (Fla. 5th DCA 2003). In deciding how to rule on a motion for directed verdict, the court must determine if any reasonable evidence exists to support a jury verdict in favor of the non-movant. *Publix Super Mkts., Inc. v. Bellaiche*, 245 So. 3d 873, 876 (Fla. 3d DCA 2018).

9. The Court has carefully considered all of the evidence presented at trial and reviewed the applicable law. The Court finds that the Plaintiff did not prove a prima facie case of unlawful discrimination based on race under the Florida Civil Rights Act. Specifically, the Plaintiff failed to proffer reasonable evidence that race was a factor in his termination from the Radiology Residency Program. In addition, the Court expressly finds that the Defendant articulated legitimate, non-discriminatory and non-retaliatory reasons for Plaintiff's remediation, probation and dismissal from the Radiology Residency Program.

Even if the Court found that the Plaintiff met its initial burden under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), Plaintiff similarly failed to show the Defendant's non-discriminatory reason for dismissal was pre-textual.[1]

10. Accordingly, a directed verdict is entered in favor of the Defendant on the only remaining claim which is the Plaintiff's claim for discrimination on the basis of race. Although employment discrimination claims may be shown by direct evidence or by circumstantial evidence, the Court finds that discrimination on the basis of race was not shown by the Plaintiff under either principle. *See Metitt v. Diltard Paper Co.*,120 F.3d 1181 (l lth Cir. 1997). A finding of discrimination from the stacking of inferences drawn from purely circumstantial evidence is improper. *Publix Super Mkts., Inc. v. Bellaiche*, 245 So. 3d 873, 876 (Fla. 3d DCA 2018).

11. Because a directed verdict is entered on three (3) of the four (4) claims and the jury entered a verdict in favor of the Defendant on the fourth claim, this Court enters a Final Judgment in favor of the Defendant as to all claims.

12. It is therefore ORDERED and ADJUDGED that Plaintiff BAIYWO ROP shall take nothing by this action and Defendant ADVENTIST HEALTH SYSTEM shall go hence without day. The Court will retain jurisdiction to determine entitlement and amount of attorney's fees and costs, if applicable.

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[1] Although the Plaintiff suggested that the Court should consider the "convincing mosaic" standard, that standard has not been adopted in Florida and even if it had been adopted there was no evidence to support it. *Johnson v. Great Expressions Dental Ctrs. of Fla., P.A.*, 132 So. 3d 1174 (Fla. 3d DCA 2014).

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 28 day of May, 2021.

Kevin B. Weiss
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 28th day of May, 2021 by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

Jill Kay